IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/08/2003

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THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

S.A.No.818 of 2002

Subbaraman .. Appellant

-Vs-

Govindaraja Reddiar .. Respondent

This second appeal is preferred under Sec.100 of The Code of Civil Procedure against the judgment and decree of the Subordinate Judge, Kulithalai dated 23.4.2001 in A.S.No.27/99 confirming the judgment and decree passed by the District Munsif, Kulithalai dated 30.10.1998 in O.S.No.84/94.

!For Appellant : Mr.G.Vasudevan

^For Respondent : Mr.P.Valliappan
for M/s.Sarvabhauman Associates

:JUDGMENT

Heard the learned Counsel for both sides.
2. No case is made out to admit this second appeal, since the Court is unable to notice any question of law, much less substantial question of law.
3. It was a suit filed by the respondent/plaintiff seeking declaration of title in respect of 'A' Schedule landed property and permanent injunction as a consequential relief along with another relief namely declaration that 'B' Schedule lands alone are the ayacut lands for the suit well and consequential permanent injunction restraining the appellant/defendant from taking water to any other land except 'B' Schedule property.
4. The case of the plaintiff in short was that there was a partition between himself and his younger brother, the appellant/defendant in the year 1952; that the landed property described in 'A' Schedule to the plaint was allotted to him; that he was in possession of the same, and subsequently, he joined service in the Police Department; that he was transferred to different places, and hence, he permitted the defendant to cultivate 'A' Schedule property for and on his behalf; that he retired in the year 1970; that the defendant voluntarily surrendered all the rights and possession, and thus, from the time onwards 'A' Schedule property is under his direct cultivation and enjoyment; that there was a common well situated in S.F.No.546/2, in which the defendant and one Krishna Reddiar were all common owners; that

subsequently, the defendant purchased the share of Krishna Reddiar, and thus, he became entitled to 3/4th share in the well; that the plaintiff was entitled to 1/4th share all along; that the well water could be utilised for irrigating only 1 acre and 10 cents of land situate in S. F.Nos.546/2, 546/4 and 546/10 and nothing more, but the defendant was attempting to irrigate his lands, which were situate outside the above three survey fields measuring 1 acre and 10 cents, and hence, it became necessary to seek for the above reliefs.

5. The suit was vehemently contested by the appellant/defendant interalia stating that though there was a partition as contended by the plaintiff, he took the property on lease from him, and he continued to be in possession till he purchased the property for a consideration of Rs.90/-; that he has been paying the kist thereafter, and thus, he is entitled to the property; that the plaintiff has no right in 'A' Schedule property attached to the plaint and cannot claim any right in the well also, and hence, the reliefs sought for by him were to be denied.

6. The trial Court, as could be well seen from the judgment, has framed all the necessary issues, tried the suit and decreed the same as prayed for. Aggrieved defendant took it on appeal. But, the first appellate Court also has affirmed the judgment of the trial Court on all the issues. Thus, both the Courts below have recorded a concurrent finding that the respondent/plaintiff is the owner of 'A' Schedule landed property; that he is entitled for a permanent injunction since he is in lawful possession; that the water in the well situated in S.F.546/2 could be utilised only for the purpose of irrigating the lands measuring 1 acre and 10 cents, situated in S.F.Nos.546/2, 546/4 and 546/10, and thus, he is also entitled for the declaration and consequential injunction as asked for in that regard.

7. What were all contended by the appellant/defendant in both the Courts below and equally here also is that he continued to be in possession originally as a lessee and subsequently as a vendee of the plaintiff.

8. Admittedly, the plaintiff and the defendant are brothers, who divided the property in the year 1952, and 'A' Schedule landed property was allotted to the share of the plaintiff. The plaintiff has well admitted in his plaint that he permitted his younger brother to cultivate on his behalf, when he was appointed in police service; that in 1 970 when he retired, the defendant voluntarily surrendered possession, and he took the possession and continued to cultivate the land. Though the defendant relied on a sale deed, wherein the consideration was shown as Rs.90/- and which did not require the registration, the plaintiff has adduced sufficient documentary evidence to show that he continued to pay the land tax thereafter through Exs.A2 to A4. He has also filed Ex.A10 chitta. Though the defendant put forth a plea of lease, there was nothing available to hold so. Hence, in view of the documentary evidence adduced by the plaintiff's side, both the Courts below were perfectly correct in recording a finding that the plaintiff continues to be in possession of the property.

9. So far as the common well was concerned, it is an admitted position that the well is situated in Survey Field No.546/2. It is also not in dispute that originally the well was for the purpose of irrigating the lands measuring 1 acre and 10 cents situated in the three survey fields namely S.F.Nos.546/2, 546/4 and 546/10. The facts that the defendant purchased the share what was available to one Krishna Reddiar, and thus, he became entitled to 3/4th share in the well are not in dispute. But, on that guise he could

not be permitted to irrigate his lands that are situate outside the said 1 acre and 10 cents of lands situated in S.F.Nos.546/2, 546/4 and 546/10. On that ground, the defendant's plea that he was entitled to irrigate his lands situate outside the lands situate in the said three survey fields cannot be permitted. Thus, both the Courts below have concurrently found that the plaintiff was entitled for the reliefs asked for and rightly too. The Court is unable to find any questi on of law, much less substantial question of law so as to admit this second appeal.

10. Therefore, this second appeal is dismissed at the admission stage itself. No costs.

Index: Yes
Internet: Yes

To:

1) The Subordinate Judge, Kulithalai.
2) The District Munsif, Kulithalai.
3) The Record Keeper, V.R. Section, High Court, Madras.

nsv/

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